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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Implementation of the)
Pay Telephone Reclassification)
and Compensation Provisions of the)
Telecommunications Act of 1996)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

CC Docket No. 96-128

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COMMENTS OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION
ON PETITIONS FOR RECONSIDERATION

The Personal Communications Industry Association ("PCIA"),¹ by its attorneys,
hereby submits its comments with respect to the petitions for reconsideration of the *Report
and Order* in the above-captioned docket.² Petitions filed by many other parties support the
specific areas of relief identified in PCIA's original filing. Several petitioners joined PCIA
in requesting that the Commission revisit its decision to adopt a "carrier pays" compensation

¹ PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

² FCC 96-388 (Sept. 20, 1996) ("*Report and Order*"). Petitions for reconsideration were filed on October 21, 1996. PCIA filed a petition for reconsideration on that date ("PCIA Petition"). The Commission has directed that filings responding to the petitions for reconsideration be submitted within seven days, or by October 28, 1996.

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scheme and instead implement a "calling party pays" mechanism. Similarly, a number of petitions demonstrated that the Commission should revise its market-based compensation approach. Any effort to increase the \$.35 default rate should be rejected. The default rate is unconscionable at its present level, let alone any higher rate. Finally, some petitioners also urged the Commission, if it retains the carrier pays mechanism, to ensure that the costs of payphone compensation are equitably collected.

I. IN THE CONTEXT OF 800 NUMBER MESSAGING SERVICES, A CALLING PARTY PAYS COMPENSATION PLAN IS THE MOST EQUITABLE MECHANISM FOR COMPENSATING PAYPHONE PROVIDERS, WILL MOST EFFECTIVELY PROMOTE COMPETITION, AND IS MOST CONSISTENT WITH EXISTING COMMISSION POLICIES

In its Petition, PCIA demonstrated that the rationale of the *Report and Order* for rejecting a calling party pays mechanism for the purpose of compensating payphone providers was not supportable.³ AirTouch Paging ("AirTouch"), PageMart II, Inc. ("PageMart"), and Paging Network, Inc. ("PageNet") also urged the Commission to reject the carrier pays plan.⁴ Instead, at least for 800 number messaging services, the Commission should require the payphone compensation to be collected from the calling party.

Shifting the burden of compensating the payphone service provider ("PSP") to the party using a payphone to place an 800 number page is appropriate. It will require the entity

³ PCIA Petition at 5-7.

⁴ AirTouch Paging Petition for Partial Reconsideration at 4-11 ("AirTouch Petition"); PageMart II, Inc. Petition for Reconsideration ("PageMart Petition"); Paging Network, Inc. Petition for Limited Reconsideration at 1-6 ("PageNet Petition").

imposing costs on the PSP and the real beneficiary of access to the payphone to bear the financial effect of his or her decision.⁵ In contrast, the carrier pays plan adopted in the *Report and Order*, particularly with its expectation that costs ultimately will be passed through to the end user of the 800 number, inappropriately imposes financial burdens on the called party which are beyond the call recipient's control. Messaging subscribers will not be able to reject calls from particular payphones, especially since the subscriber will have no way to determine the significance of the message that might be blocked.⁶ For example, a parent with a pager cannot know if the attempted call is from a child needing immediate assistance. Likewise, a business person may not want to risk missing an important page that could lead to significant opportunities. For the same reasons, wholesale blocking of 800 number calls from payphones by messaging operators or interexchange carriers simply is not feasible if pagers and other messaging devices are to continue to be the vital wireless communications devices they have become.

Like PCIA, other petitioners emphasized that the *Report and Order* did not adequately explain the basis for the determination that a calling party pays plan is "unduly" burdensome on payphone users.⁷ The *Report and Order* ignores the magnitude of the burdens placed on interexchange carriers ("IXCs")⁸ and their subscribers as well as on the messaging

⁵ See PCIA Petition at 5; AirTouch Petition at 9; PageNet Petition at 3, 5.

⁶ See PageNet Petition at 19-20.

⁷ AirTouch Petition at 4-5; PageMart Petition at 2-3.

⁸ IXCs, for example, will need to implement tracking systems and establish PSP reimbursement mechanisms. See AirTouch Petition at 6.

industry.⁹ Implementation of the Congressional mandate embodied in Section 276 of the Communications Act of 1934, as amended, will necessarily change the dynamics of payphone usage¹⁰ and income. To ensure that the Commission chooses the least burdensome mechanism and the one that minimizes transaction costs, the Commission must examine the burdens and transaction costs imposed on all affected entities. The record in this proceeding strongly suggests that, at least with respect to 800 number messaging services, the least disruption and the most public interest benefit can be achieved by requiring the calling party to be responsible for reimbursement of the payphone provider.

Section 276 directs the Commission to promote competition in the payphone marketplace. Deploying a calling party pays mechanism will more effectively help to achieve that goal than requiring ultimate reimbursement from the recipients of pages.¹¹ The messaging subscriber has no control over which payphone is used by a caller. The party using a payphone to place an 800 number page, however, can assess the amounts charged by payphone operators and can choose to use one payphone over another. That conscious choice is a far more direct driver of competition.

⁹ The AirTouch Petition discusses the competitive harms likely to be suffered by the messaging industry directly resulting from the Commission's chosen compensation mechanism. AirTouch Petition at 6-8.

¹⁰ Consumers may need to learn new habits when using payphones, but that circumstance alone does not render a calling party pays scheme unduly burdensome on payphone users. As the record in the proceeding reflects, members of the public are generally accustomed to having to pay to use a payphone. *See, e.g.*, AirTouch Petition at 5.

¹¹ Under the Commission's current plan, messaging subscribers either will be directly responsible for call-by-call reimbursement, or will pay to compensate payphone providers through increased charges for their interexchange or messaging services.

Moreover, in seeking to further payphone competition, Section 276 does not specify the compensation methodology to be adopted by the Commission. Calling party pays clearly is fully consistent with the statutory requirements. Moreover, Congress cannot have intended that action to promote competition in the payphone marketplace would be taken at the expense of competition in the messaging industry -- especially where the record demonstrates that replacement of the carrier pays mechanism with a calling party pays scheme would be less disruptive and otherwise promote achievement of the Congressional intent.

In addition to being consistent with the requirements of Section 276, the calling party pays mechanism is in compliance with the requirements of Section 226(e)(2) of the Communications Act of 1934, as amended (also known as TOCSIA).¹² There thus is no legal impediment to adoption of a calling party pays plan, and, indeed, such a plan most effectively furthers the statutory goals set forth by Congress.

For the reasons stated above, a calling party pays mechanism will most effectively further the overall public interest. Accordingly, the Commission should reconsider its carrier pays plan and replace it with a calling party pays mechanism at least in the context of 800 number messaging services.

¹² PCIA Petition at 6-7; AirTouch Petition at 8-9; PageMart Petition at 3.

II. THE MARKET-BASED COMPENSATION RATE ADOPTED IN THE REPORT AND ORDER DOES NOT RESULT IN "FAIR" COMPENSATION, AT LEAST IN THE CONTEXT OF 800 NUMBER MESSAGING SERVICES

The Commission's adoption of a market-based compensation rate, including its specification of a \$.35 default rate, was challenged by a large number of petitioners, including members of the messaging services industry, IXCs,¹³ and 800 subscribers.¹⁴ A number of these parties question the Commission's reliance on local coin rates to determine the compensation rate to be paid PSPs in connection with 800 number calls from payphones.

Parties challenging the Commission's adoption of a \$.35 default rate for compensation for 800 number calls demonstrate that this amount will result in a large windfall for PSPs -- a result that cannot have been intended when Congress called for "fair compensation" for payphone providers. Application of the default rate to 800 number calls from payphones assumes that *all* calls made on *all* payphones incur the same costs, and thus warrant the same level of reimbursement. As the petitions for reconsideration make clear, this simply is not the case.¹⁵ Messaging service users of 800 numbers do not obtain from the payphone

¹³ AT&T Corp. Petition for Reconsideration and Clarification at 5-15 ("AT&T Petition"); Cable & Wireless, Inc. Petition for Reconsideration at 7-13 ("C&W Petition"); WorldCom, Inc. d/b/a/ LDDS WorldCom Petition for Reconsideration at 8-11 ("LDDS WorldCom Petition"); MCI Telecommunications Corporation Petition for Reconsideration and Clarification at 2-4, 10-16 ("MCI Petition"); Sprint Corporation Petition for Reconsideration at 2-8, 10-13 ("Sprint Petition").

¹⁴ Letter to Regina Keeney from John D. Lee, Budget Rent-A-Car (Oct. 21, 1996); Letter to the Honorable Reed E. Hundt from Christopher G. McGann, 1-800-Flowers (Oct. 21, 1996).

¹⁵ See PageNet Petition at 10-16; AT&T Petition at 10-11; C&W Petition at 5-7; LDDS WorldCom Petition at 8-9; MCI Petition at 12-13; Sprint Petition at 3-4.

provider the same services that a local coin caller receives. Thus, the Commission's default rate results in payment to the PSP for services that are not in fact provided by the PSP for an 800 call originated at the payphone.

The adoption of the market-based rate and the default amount of \$0.35 also ignores other significant pricing considerations. A blanket amount based on local coin calls distorts the payphone compensation mechanism. Additional considerations that should be taken into account include the differences between coin and coinless payphones in their price as well as in the activities (such as maintenance and coin collection) that incur significant costs. Despite these differences, however, the *Report and Order* requires all 800 number messaging uses to be responsible for the same level of compensation to payphone providers.

Finally, the Commission's decision in this proceeding, for the first time in the history of telecommunications law, would require 800 number messaging service users to pay for the customer premises equipment ("CPE") used by the calling party. Compensating payphone providers for their equipment is not the same thing as ensuring that PSPs are fairly compensated for all completed calls made by means of their payphones.¹⁶

The Commission accordingly should take every step to ensure that the compensation paid to PSPs in connection with 800 number messaging uses reflects only the actual services provided by the payphone operator. Retention of the methodology and default amount set forth in the *Report and Order* will excessively reimburse payphone providers at the expense of consumers and operators in the competitive messaging marketplace.

¹⁶ See PageNet Petition at 18.

The Commission should reject the efforts of the Wisconsin Pay Telephone Association, Inc. ("WPTA") to increase the default rate several times above the \$.35 set by the *Report and Order*. The request is absurd. WPTA asserts that the \$.35 rate should be replaced with either a \$1.50 or \$.90 per call rate.¹⁷ WPTA states that these outrageous levels are more accurate market surrogates and are justified by the fact that dial-around calls have inappropriately "taken" payphone revenues.¹⁸ WPTA offers no justification with more substance than these claims. Given the showing in the record that \$.35 is too high for 800 number messaging services, the Commission should summarily reject the WPTA request.

III. EVEN IF THE COMMISSION RETAINS A CARRIER PAYS COMPENSATION PROGRAM, THE CHARGES SHOULD NOT BE PASSED THROUGH TO THE INDIVIDUAL SUBSCRIBERS

The *Report and Order* reflects a desire for IXC's to pass through to individual 800 number subscribers the charges associated with providing compensation to payphone providers. Certain petitions for reconsideration demonstrate the infeasibility of such an approach in connection with the messaging industry. Initially, under the Commission's scheme, charges for individual 800 calls may not be received by IXC's or messaging operators for up to one year *after* they are incurred. In view of this consequence, it will be practically difficult, and in some cases legally impossible, for messaging operators to pass

¹⁷ Wisconsin Pay Telephone Association, Inc. Petition for Reconsideration at 11.

¹⁸ *Id.* at 8-11.

through the payphone charges to individual subscribers.¹⁹ Some states prohibit billing for services after a certain period of time (*e.g.*, 60 days) has elapsed.²⁰ Also, carriers find that subscribers are more likely to object to a bill rendered remote in time to the event that triggered the charge.

PCIA thus recommends that the Commission consider adopting a requirement that IXCs spread the costs of compensating payphone providers across all 800 users. This is a more equitable means of compensating payphone providers without fully disrupting existing telecommunications services.²¹

IV. CONCLUSION

The Commission should reconsider its decision to institute a carrier pays compensation scheme for PSPs. Instead, it should institute a calling party pays or coin drop approach to such compensation. Such a scheme would most effectively achieve the goals of Section 276 without sacrificing competition in other telecommunications markets. The Commission should also revise its market-based compensation scheme in light of the inequities that policy imposes on 800 number subscribers. Finally, if it retains the carrier pays approach, the Commission should spread the burden for compensating PSPs by requiring IXCs to spread the costs over all 800 users or by utilizing a portion of the

¹⁹ See AirTouch Petition at 7-8 n.19.

²⁰ See AirTouch Petition 7-8 n.19; PageNet Petition at 18.

²¹ See PageNet Petition at 20-21. Alternatively, the Commission could consider increasing the subscriber line charge to provide compensation to payphone providers, since the general public benefits from access to payphones.

subscriber line charge to compensate PSPs. Such action will result in more equitable compensation of payphone providers without unfairly disadvantaging the users of 800 numbers.

Respectfully submitted,

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